Supreme Court, U.S.
FILED
07-45 JUN 11 2007
OFFICE OF THE CLERK

No._____

In The
Supreme Court of the United States

MAURICE J. SALEM f/k/a MAURICE J. NESHEWAT and CLODIA A. SALEM,

Petitioners.

-against-

MICHAEL NESHEWAT, *Respondent.*

Petition for a Writ of Certiorari To the United States Court of Appeals For the Second Circuit

---

Maurice J. Salem,
Attorney of Record and
Attorney pro se
7156 W. 127th St.,B149
Palos Heights, IL. 60463
Tel. (708) 277-4775
Fax (708) 448-4515
email: maurice@
salemlawoffice.com

A. Question Presented

Whether the *Rooker-Feldman* doctrine applies in diversity jurisdiction cases?

B. List of Parties and Rule 29.6 Corporate Statement

The parties to this proceeding are listed in the caption and, pursuant to Rule 29.6; none of the parties herein are corporate entities nor are they agents of any corporate entity.

C. Table of Contents and Cited Authorities are not required because this petition contains fewer than five pages.

D. Jurisdictional Statement

i. The decision of the United States Court of Appeals for the Second Circuit was entered on: August 23, 2006. (See Appendix below page 1). The case was docketed as No. 05-1954

ii. The petition rehearing en banc was denied by order dated: March 13, 2007 (See Appendix below page 4)

iii. No cross petition is filed.

iv. The statutory provision conferring jurisdiction is based on this Court's Rule 10 (h), in that, the U.S. Court of Appeals for the Second Circuit entered a decision in this case that directly conflicts with the U.S. Court of Appeals for the Eleventh Circuit decision shown on page 6 of the Appendix: *Ware v. Fleetboston Financial Corp.*., 2006 U.S. App. Lexis 10861 (11th Cir. 2006). Also, jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

v. Rule 29.4(b) is not applicable in this case

E. Constitutional and Statutory Provisions Involved

1. The *Rooker-Feldman* doctrine.
2. The diversity jurisdiction statute: 28 U.S.C. § 1332. This action was removed from a state court to the U.S. District Court,

for the Southern District of New York, on the basis of diversity jurisdiction. *Neshewat v. Salem*, No. 02 CIV. 98[illegible] (WCC).

F. Statement of Case

This action was removed by the petitioners to the U.S. District Court, for the Southern District of New York, from a state court on the basis of diversity jurisdiction, 28 U.S.C. § 1332, and it was docketed as No. 02 CIV. 9807 (WCC). The District Court dismissed the petitioners' counterclaim on the basis of *res judicata*. (See Appendix page 2).

The U.S. Court of Appeals, for the Second Circuit, found that *res judicata* did not apply because the prior action was not litigated on the merits, but affirmed the decision to dismiss petitioners' counterclaim on the basis of the *Rooker-Feldman* doctrine. (See Appendix page 2).

In a petition for rehearing, petitioners presented to the U.S. Court of Appeals for the Second Circuit a decision from the Eleventh Circuit where it was held that the *Rooker-Feldman* doctrine does *not* apply in a diversity jurisdiction case. (See the Eleventh Circuit's decision starting on page 6 of the Appendix below: *Ware v. Fleetboston Financial Corp.*., 2006 U.S. App. Lexis 10861 (11th Cir. 2006))

Notwithstanding the fact that the Second Circuit was made aware that its decision in the instant case directly conflicts with the Eleventh Circuit's decision in *Ware*, it did not address the issue. (See the Appendix page 4). Unlike *Ware*, in the instant case there is no dispute that this action is in the federal court on diversity jurisdiction basis. *Neshewat v. Salem*, No. 02 CIV. 9807 (WCC). The petition for rehearing was denied. (Appendix page 4).

Starting on page 15 of the Appendix below is the July 15, 2005 Order of the U.S. District Court for the Northern District of

Georgia in the *Ware* case. *Ware's* factual circumstances in the state and district court are very similar to the instant case, except the individuals who wrongfully obtained a default judgment in the instant case foreclosed on petitioners' home.

G. Argument

1. The *Rooker-Feldman* doctrine does *not* apply in diversity jurisdiction cases.

The U.S. Court of Appeals for the Eleventh Circuit's decision, *Ware v. Fleetboston Financial Corp.*., 2006 U.S. App. Lexis 10861 (11th Cir. 2006), explains, better than this petitioner can, why the *Rooker-Feldman* doctrine does *not* apply in diversity jurisdiction cases. (See said Eleventh Circuit decision starting on page 6 of the Appendix below.) The Eleventh Circuit's holding in *Ware* directly conflicts with the Second Circuit's holding in the instant case because the Second Circuit held that the *Rooker-Feldman* doctrine does apply in diversity jurisdiction cases and on this basis it dismissed petitioners' counterclaim. (See page 2 of the Appendix below).

A review of the fundamentals in the *Rooker-Feldman* doctrine in any law school textbook, such as *The Federal Courts and The Federal System*, (Hart and Wechsler's Fourth Edition), pages 1500 through 1504, and a review of diversity jurisdiction, pages 1521 to 1542, of the same textbook, clearly reveals that, on a very fundamental level, the *Rooker-Feldman* doctrine cannot apply in diversity jurisdiction cases.

The *Rooker-Feldman* doctrine prohibits litigants from transferring their state court cases (which originated and ended in the state court) to the federal court rather than appealing it in the state court. However, under diversity jurisdiction the district court has original statutory jurisdiction and the *Rooker-Feldman* does not apply. *Ware v. Fleetboston Financial Corp.*., 2006 U.S. App. Lexis 10861 (11th Cir. 2006).

Just like the defendant in *Ware*, the petitioners in this case were seeking to defend against the action under original jurisdiction in the district court. "Defendant invoked the district court's original jurisdiction over the case and was not appealing the state court judgment." *Id.* The instant case is identical to *Ware*, except the injustice was much greater; in that, the default judgment remains effective in the instant case and it was used this year, 2007, to foreclose on petitioners' home.

Moreover, the *Rooker-Feldman* doctrine is court created law, which does not and cannot displace statutory law, i.e. the diversity of jurisdiction statute: 28 U.S.C. § 1332.

2. The reason the Writ should be granted.

Resolving the one legal issue in this case not only resolves a conflict between the Eleventh and Second Circuits, but it also determines to what extent diversity jurisdiction permits state court claims to be litigated in the federal courts.

In addition, this case can clarify the circumstances under which the *Rooker-Feldman* doctrine applies, together with the limitations of federal court jurisdiction. This Court can build on its *Rooker-Feldman* doctrine rulings in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 125 S. Ct. 1517, 161 L.Ed. 2d 454 (2005), by handing down a ruling which makes it clear that the *Rooker-Feldman* doctrine does not apply in diversity jurisdiction cases.

It is this petitioner's belief that this fundamental misapplication of the *Rooker-Feldman* doctrine by the Second Circuit should be indicative of a broader misunderstand and misapplication of the doctrine among other federal courts.

Conclusion

The U.S. Court of Appeals for the Second Circuit believes that the *Rooker-Feldman* doctrine applies in diversity jurisdiction cases and the Eleventh Circuit believes that the *Rooker-Feldman*

doctrine does *not* apply in diversity jurisdiction cases. A writ of certiorari should be granted to resolve this conflict and to hand down a clear rule that states: the *Rooker-Feldman* doctrine does *not* apply in diversity jurisdiction cases.

Respectfully submitted,

/S/Maurice J. Salem,
Attorney of Record and
Attorney pro se
7156 W. 127th St.,B149
Palos Hts, IL. 60463
Tel. (708) 277-4775
Fax (708) 448-4515
Email: maurice@
salemlawoffice.com

H. Appendix

TABLE OF CONTENTS

Document	Page
Second Circuit's Order dismissing petitioners' counterclaim on the basis of *Rooker-Feldman*.	1
Second Circuit Order denying petition for rehearing.	4
Eleventh Circuit decision in *Ware v. Fleetboston Financial Corp.*., 2006 U.S. App. Lexis 10861 (11th Cir. 2006).	6
July 15, 2005, Order of the U.S. District Court Northern District of Georgia	15

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR THE PURPOSE OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of August, two thousand and six.

PRESENT:

HON. CHESTER J. STRAUB,
HON. ROSEMARY S. POOLER,
HON. ROBERT D. SACK,

Circuit Judges

FILED:
AUG. 23 2006

MICHAEL NESHEWAT,

Plaitiff-Counter-Defendant-Appellee,

- v-

No. 05-1954-cv

MAURICE J. SALEM, f/k/a Maurice J. Neshewat,

Defendant-Counterclaimant-Appellant,

CLODIA A. SALEM,

Defendant-Appellant.

Appearing for Appellants: Maurice J. Salem, Palos Heights, IL (pro se)
Appearing for Appellee: Paul J. Goldstein, Goldstein & Metzger, LLP, Poughkeepsie, NY.
Issued as Mandate: SEP 13 2006

Appeal from a judgment of the United States District Court for the Southern District of New York (William C. Conner, Judge).

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED and DECREED that the judgment of the district court be, and it hereby is, AFFIRMED.

Defendant-appellants Maurice J. Salem ("Salem") and Clodia A. Salem appeal from the judgment of the district court, which was based upon an order entered April 13, 2005, dismissing Salem's counterclaim, granting summary judgment to the plaintiff, and enjoining Salem from filing or prosecuting, without leave of the court, actions in federal district court against the plaintiff or his counsel seeking review or relief from a default judgment entered against Salem in the Supreme Court of Dutchess County, New York in 1999.

We affirm for substantially the reasons stated by the district court. Because the bulk of the claims Salem previously brought in federal district court were dismissed on the basis of the Rooker-Feldman doctrine, see Salem v. Paroli, 79 Fed. Appx. 455 (2nd Cir. 2003), and "Rooker-Feldman goes to subject-matter jurisdiction." Hoblock v. Albany County Bd. Of Elections, 422 F.3d 77, 83 (2d Cir. 2005), and therefore such a dismissal "is not an adjudication of the merits, and hence has no res judicata effect." St. Pierre v. Dyer, 208 F.3d 394, 400 (2d Cir. 2000), we have some doubt as to whether the district court's dismissal of Salem's counterclaim should have been on the basis of res judicata. But we conclude that it should have been dismissed in any event as barred by Rooker-Feldman. See Hoblock, 422 F.3d at 85; Dist. Of Columbia Ct. of App. v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923).

We have considered appellants' remaining arguments and conclude that they are without merit.

For the foregoing reasons, we hereby AFFIRM in every respect the judgment of the district court.

FOR THE COURT
Roseann B. MacKechnie, Clerk

By:_____

A TRUE COPY
Roseann B. MacKechnie, Clerk
By _____
DEPUTY CLERK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL, U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Thomas Asreen
ACTING CLERK

Date: FILED: MAR 13, 2007

Docket Number: 05-1954-cv
Short Title: Neshewat v. Salem
DC Docket Number: 02-cv-9807
DC: SDNY (WHITE PLAINS)
DC Judge: Honorable William Conner

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the day of March two thousand seven.

MICHAEL NESHEWAT,
Plaitiff-Counter-Defendant-Appellee,

- v-

MAURICE J. SALEM, f/k/a Maurice J. Neshewat,
Defendant-Counterclaimant-Appellant,

CLODIA A. SALEM,
Defendant-Appellant.

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Appellant Maurice Salem, Appellant Clodia Salem. Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,
Thomas Asreen, Acting Clerk

By:_____
Motion Staff Attorney

TONY L. WARE, CEO, T.L. WARE BOTTLING COMPANY, INC., Plaintiffs-Appellants, versus FLEETBOSTON FINANCIAL CORP., f.k.a. Bankboston Corp., Defendant-Appellee.

No. 05-13565 Non-Argument Calendar

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

2006 U.S. App. LEXIS 10861

May 2, 2006, Decided
May 2, 2006, Filed

NOTICE: [*1] NOT FOR PUBLICATION

PRIOR HISTORY: Appeal from the United States District Court for the Northern District of Georgia, D.C. Docket No. 05-00426-CV-MHS-1

Ware v. Fleetboston Fin. Corp., 2005 U.S. Dist. LEXIS 34333 (N.D. Ga. Dec. 8, 2005)

DISPOSITION: AFFIRMED

CASE SUMMARY:

PROCEDURAL POSTURE: The United States District Court for the Northern District of Georgia granted defendant's *Fed. R. Civ. P. 12(b)* motion to dismiss and its *Fed. R. Civ. P. 60(b)* motion to set aside orders. It denied plaintiffs' motion to remand. Plaintiffs appealed, arguing, *inter alia*, the district court did not have jurisdiction under the *Rooker-Feldman* doctrine and the state action was not removable because it was pending appeal in the state's highest court.

OVERVIEW: The appellate court held the *Rooker-Feldman* doctrine did not apply because the district court had subject-

matter jurisdiction over the case and defendant was seeking to defend against the action under original jurisdiction. Defendant invoked the district court's original jurisdiction over the case and was not appealing the state court judgment. The district court properly found that it could exercise original jurisdiction. The district court had 28 U.S.C.S. § 1332 diversity jurisdiction because the controversy existed between citizens of Georgia and Delaware and the amount in controversy was above $75,000. In addition, the district court had 28 U.S.C.S. § 1331 federal question jurisdiction because plaintiff asserted violation of federal statutes. Further, because the state action was properly removed to federal district court under original jurisdiction, the district court had authority to set aside orders of the state court under *Fed. R. Civ. P. 60(b)*. The fact that a final judgment was entered is the state court did not preclude removal. Even though defendant was dissolved and did not have a certificate of authority, it had the power to remove the state action.

OUTCOME: The appellate court affirmed the district court's decision.

COUNSEL: For T.L. Ware Bottling Company, Inc., Appellant: Michael R. Johnson, Sr., Johnson & Associates, P.C., ATLANTA, GA.

For Fleetboston Financial Corp., Appellee: William J. Holley, II, Parker, Hudson, Rainer & Dobbs, LLP, ATLANTA, GA; Michael D. Grider, ATLANTA, GA; Nancy H. Baughan, Parker, Hudson, Rainer & Dobbs, ATLANTA, GA.

JUDGES: Before ANDERSON, BIRCH and WILSON, Circuit Judges.

OPINION: PER CURIAM:

Tony L. Ware, proceeding pro se, and T.L. Ware Bottling Co., Inc.[1] ("Ware Bottling"), through counsel, (collectively

---

[1] Ware Bottling concedes that it was administratively dissolved at one time, but argues that according to Ga. Code Ann. § 14-2-1409(c), its

referred to as "Ware") appeal from the district court's orders granting FleetBoston Financial Corporation's (FleetBoston") *Federal Rule of Civil Procedure 12 (b)* motion to dismiss and *Federal Rule of Civil Procedure 60(b)* motion to set aside orders, and denying Ware's motion to remand.[2] On appeal, Ware argues that the district court did not have jurisdiction under the *Rooker-Feldman* doctrine, the state action was not removable because it was pending appeal in the state's highest court, FleetBoston did not have the capacity to remove the action because it was a dissolved corporation and as such could not suffer any injury in fact, and FleetBoston did not timely remove the action.

Upon review of the record, and upon consideration of the briefs of the parties, we discern no reversible error.

I.

We review whether the district court had removal jurisdiction de novo. *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065, 1068 (11th Cir. 2001) (per curiam), aff'd sub nom., *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 123 S.Ct. 366, 154 L.Ed.2d 368 (2002).

Federal law governing removal of actions in pending state courts provides in relevant part:

---

corporate status was returned to active or good standing with the Georgia Secretary of State because it was reinstated on April 22, 2005, before the district court entered the final orders at issue. Nevertheless, it is not necessary to address this issue here because, even if Ware Bottling was improperly dismissed in accordance with § 14-2-1409(c), we affirm the district court, for reasons set forth, infra.

[2] FleetBoston moved to dismiss under Rule 12(b)(6), but attached documents outside the pleadings in support thereof, which the district court considered in its order. Although this might have triggered the conversion provision of Rule 12(b)(6) and the Rule 56 requirements for notice and special attention to pro se litigants, we find that the district court's reliance upon facts outside of Ware's complaint was harmless. See *Artistic Entm't, Inc. v. City of Warner Robins*, 331 F.3d 1196, 1202 (11th Cir. 2003)(per curiam).

> (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purpose of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

28 U.S.C. § 1441(a).

In *Jackson v. American Sav. Mortgage Corp.*, 924 F.2d 195, 197 (11th Cir. 1991), we reviewed the removal of a case which took place on the same day that the state court plaintiff filed a notice of appeal in the state supreme court. We concluded, without specifically addressing the issue, that the case was removable under § 1441(a) notwithstanding the notice of appeal. Id. Further, in *In re Savers Fed. Sav. & Loan Ass'n*, 872 F.2d 963, 965-66 (11th Cir. 1989) (per curiam), we addressed the issue squarely and confirmed that, depending on the circumstances, a state action in which a final judgment had been entered could be removed to federal district court.

The record shows that, in fact, there was no pending appeal in the Supreme Court of Georgia. Even if the state action was pending appeal, however, FleetBoston could have removed the state action to this Court. *See Jackson*, 924 F.2d at 197. Furthermore, the fact that a final judgment was entered in the state court does not preclude removal in this instance. *See In re Savers Federal Sav. & Loan Ass'n*, 872 F.2d at 965-66. Accordingly, we affirm in this respect.

II.

As noted above, 28 U.S.C. § 1441(a) permits a defendant to remove any civil action brought in a state court of which the district courts of the United States have original jurisdiction.

"The right of removal is statutory; before a party may avail himself of it, he must show that he comes within the provisions of the statute." *Edwards v. E.I. Du Pont De Nemours & Co.*, 183 F.2d 165, 168 (5th Cir. 1950).

In *Groom v. Mortimer Land Co.*, 192 F. 849, 851 (5th Cir. 1912), the court applied a New Jersey statute that perpetuated the existence of a dissolved corporation for the purpose of defending against lawsuits. The Fifth Circuit held that the dissolved corporation could remove the case from state to federal court. *Id.* A similar Georgia statute provides that a foreign, withdrawn corporation may defend itself against any proceeding even without a certificate of authority. Ga. Code Ann. § 14-2-1502(d).

Even though FleetBoston was dissolved and did not have a certificate of authority, it had the power to remove the state action to the federal district court. Accordingly, we affirm in this respect.

III.

According to 28 U.S.C. § 1446(b), "[t]he notice of removal of a civil action . . . shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. . ." Section 1446(b)(the timeliness requirement), is an express statutory requirement for removal and the failure to comply "can fairly be said to render the removal 'defective' and justify a remand pursuant to § 1447(c)." *Snapper, Inc. v. Redan*, 171 F.3d 1249, 1253 (11th Cir. 1999).

The United States Supreme Court has held that a "defendant's time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service." *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48, 119 S. Ct. 1322, 1325, 143 L. Ed.2d 448 (1999).

Georgia law provides that:

> [p]rocess shall be served by the sheriff of the county where the action is brought or where the defendant is found, or by such sheriff's deputy, or by the marshal or sheriff of the court, or by such official's deputy or by any citizen of the United States specially appointed by the court for that purpose, or by someone who is not a party and is not younger than 18 years of age and has been appointed as a permanent process server by the court in which the action is brought.

Ga. Code Ann. § 9-11-4(c).

Georgia law further provides that: "[a]fter the withdrawal of [a foreign] corporation is effective, service of process on the Secretary of State . . . is service on the [foreign] corporation." Ga. Code Ann. § 14-2-1520(c). Further, "[a]ny party that serves process upon the Secretary of State . . . shall also mail a copy of the process to the chief executive officer, chief financial officer, the secretary of the foreign corporation, or a person holding a comparable position at the mailing address set forth [in the certificate of withdrawal]."

The United States Supreme Court, however, has held that a state statute that allows a defendant to be served by serving the state secretary of state, without more, violated due process. *Wuchter v. Pizzutti*, 276 U.S. 13, 21, 48 S. Ct. 259, 261, 72 L. Ed. 446 (1928). Further, in the context of serving a foreign corporation authorized to transact business in the state of Georgia, the failure to comply strictly with the statutory requirement for service on such corporation renders the attempted service defective. *Howard v. Technosystems Consol. Corp.*, 536 S.E.2d 753, 756 (Ga. Ct. App. 2000).

Ware did not properly serve FleetBoston, and therefore, service of process was defective. FleetBoston did not have actual notice until it received a copy of the complaint on February 9, 2005, and therefore, it timely removed on February

15, 2005, which was well within the 30-day statutory period. Accordingly, we affirm in this respect.

IV.

"We review questions of subject matter jurisdiction de novo." *Milan Express, Inc. v. Averitt Express, Inc.*, 208 F.3d 975, 978 (11th Cir. 2000).

Section 1257(a) limits review of final judgments rendered by the highest court of a state to the United States Supreme Court. 28 U.S.C.A. § 1257(a). The *Rooker-Feldman* doctrine explains that federal district court may only exercise original jurisdiction and not appellate jurisdiction over state court judgments, as that is reserved under § 1257 to the United States Supreme Court. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed.2d 206 (1983).

The United States Supreme Court recently revisited the *Rooker-Feldman* doctrine in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 125 S. Ct. 1517, 161 L. Ed.2d 454 (2005). In *Exxon Mobil Corp.*, a defendant was sued in the state court, but countersued in the federal district court. 544 U.S. at __, 125 S. Ct. at 1525. After the defendant won at trial in the state court, the plaintiff appealed to the state supreme court. *Id.* Meanwhile, the plaintiff attempted to dismiss the federal case, but its motion was denied. Id. The plaintiff took an interlocutory appeal to the Third Circuit Court of Appeals, which on its own motion raised the question of whether subject matter jurisdiction over the case fails under the *Rooker-Feldman* doctrine because the claim had litigated in state court. *Id.* The United States Supreme Court granted certiorari and answered that federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state court. Id. at 1526-27. Furthermore, the Supreme Court stated that a district court is not without subject matter jurisdiction simply because a party attempts to litigate in the federal court a matter previously litigated in the state court. *Id.* Without more, the Court held that

Exxon Mobil had not repaired to federal court to undo the state court judgment, and that *Rooker-Feldman* did not vanquish jurisdiction after *Exxon Mobil* prevailed in the state court. *Id.* at 1527-28.

Subject-matter jurisdiction in federal court can be found under either 28 U.S.C. § 1331, federal question, or 28 U.S.C. § 1332, diversity jurisdiction. To establish federal question jurisdiction, FleetBoston must demonstrate that the complaint alleges a violation of constitutional rights or a right created under a federal law. 28 U.S.C. § 1332.[3] For diversity jurisdiction, FleetBoston must demonstrate that the parties are citizens of different states and that the matter in controversy exceeds $75,000. 28 U.S.C. § 1332.

When a case is removed to federal district court under original jurisdiction "the federal court takes it as [though] everything done in the state court had in fact been done in the federal court." *Savell v. S. Ry. Co.*, 93 F.2d 377, 379 (5th Cir. 1937). Therefore, "a federal district court may dissolve or modify injunctions, orders, and all other proceedings which have taken place in state court prior to removal." *Maseda v. Honda Motor Co., Ltd.*, 861 F.2d 1248, 1252 (11th Cir. 1988).

The *Rooker-Feldman* doctrine does not apply here because FleetBoston was invoking the district court's original jurisdiction over the case and was not appealing the state court judgment. *See Exxon Mobil Corp.*, 544 U.S. at __, 125 S. Ct. at 1527. The district court, however, properly found that it could exercise original jurisdiction. The district court had § 1332 diversity jurisdiction because the controversy existed between citizens of Georgia and Delaware, and the amount in controversy was well

---

[3] FleetBoston argued that to the extent that Ware's allegations of federal law violations were not frivolous, the district court had federal question jurisdiction pursuant to 28 U.S.C. § 1331. The district court ultimately dismissed Ware's federal law claims. Because Ware refers to these claims only once in his initial brief, in the statement of facts section, and without any citation to legal authority, these claims are waived. *See Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989).

above the requisite $75,000. In addition, the district court had § 1331 federal question jurisdiction because Ware asserted violations of federal statutes.

Furthermore, because the state action was properly removed to federal district under original jurisdiction, the district court had authority to set aside orders of the state court under Rule 60(b). *See Savell*, 93 F.2d at 379; *wwwMaseda*, 861 F.2d at 1252.

In sum, because the district court had subject-matter jurisdiction over the case, and FleetBoston was seeking to defend against the action under original jurisdiction, the *Rooker-Feldman* doctrine does not apply. Accordingly, we affirm in this respect.

AFFIRMED.

A True Copy – Attested
Clerk U.S. Court of Appeals,
Eleventh Circuit

By:_____
Deputy Clerk
Atlanta, Georgia

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta
JUL 15 2005
LUTHER D. THOMAS, Clerk
By:_____, Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TONY L. WARE, CEO, and T.L. WARE BOTTLING CO., INC.,	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	1:05-CV-426- MHS
FLEETBOSTON FINANCIAL CORPORATION f/k/a BankBoston Corporation,	:	
Defendant.	:	

ORDER

On May 26, 2005, the Court ordered plaintiff Ware and his attorney, Michael R. Johnson, Sr., to show cause in writing within 30 days why the Court should not impose sanctions on them for their fraudulent and abusive litigation tactic. In addition, in anticipation of the possible imposition of monetary sanctions, the Court ordered plaintiff Ware and Mr. Johnson to submit sworn statements of their current financial condition, including a complete listing of their current income, assets, and liabilities. Now before the Court are plaintiff Ware's and Mr. Johnson's response to the Court's May 26, Orders.

In their response, plaintiff Ware and Mr. Johnson fail to provide any explanation whatsoever for their egregious course of misconduct in this case. Instead, they have compounded their wrongdoing by filing yet another frivolous motion, this time

seeking to have the Court's May 26 Order set aside and this case remanded to state court. Most of the arguments asserted by plaintiffs are the same frivolous arguments this Court has already considered and rejected. In addition, plaintiffs contend for the first time that this Court lacks jurisdiction under the *Rooker-Feldman* doctrine. This argument is also frivolous.

As the Supreme Court recently explained, the *Rooker-Feldman* doctrine is strictly limited to cases where a federal district court is asked to exercise appellate jurisdiction over a state-court judgment. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. __, 125 S. Ct. 1517, 1526 (2005). The doctrine has no application in cases like this one, where a party invokes a district court's original jurisdiction by timely removing the case to that court. *See In re Meverland Co.*, 960 F.2d 512, 516 n.6 (5th Cir. 1992)(removal "does not constitute the appeal of a state court judgment to federal court").

Plaintiff Ware's and Mr. Johnson's response are also completely deficient in disclosing their current financial conditions. Plaintiff Ware has failed to provide any statement of his current income. He claims that his sole assets are an automobile worth $400 and bank account totaling $13, and that he has unspecified debts totaling $3,200 and medical bills totaling $350. Mr. Johnson also fails to provide any statement of his income or of the value of the house he owns. He claims unspecified debts, including debts shared with his wife, totaling more than $300,000.

Defendant requests an opportunity to conduct discovery aimed at ascertaining plaintiffs' and Mr. Johnson's true financial condition. In light of their refusal to provide complete information in response to the Court's Order, the Court concludes that such discovery is warranted. Defendant shall have sixty (60) days from the date of entry of this order to conduct discovery regarding plaintiffs' and Mr. Johnson's financial condition, including both written discovery and depositions. Defendant may request additional time to complete such discovery, if necessary. Defendant should promptly bring

to the Court's attention any failure or refusal by plaintiff Ware or Mr. Johnson to cooperate in discovery. Within twenty (20) days after the close of the discovery period, defendant shall submit to the Court its assessment of the ability of plaintiffs and Mr. Johnson to pay sanctions. Plaintiffs and Mr. Johnson shall have ten (10) days thereafter to file a response.

In summary, the Court DENIES plaintiffs' motion to set aside orders and remand case [#27] and GRANTS defendant's request to conduct discovery [#30-1]. Defendant shall have (60) days from the date of entry of this order to conduct discovery regarding plaintiffs' and Mr. Johnson's financial condition and shall submit its assessment of plaintiffs' and Mr. Johnson's ability to pay sanctions within (20) days thereafter. Plaintiffs and Mr. Johnson shall have ten (10) days to file a response to defendant's submission. The Court DIRECTS the Clerk to resubmit this case after expiration of the above time period.

IT IS SO ORDERED, this 15th day of July, 2005.

Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia